

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Robert L. Reibold, Administrative Law Judge

APPELLANT CASE No. 2024--000823

Patrick Bryant, #215212 - - - - - Appellant,

- VS -

South Carolina Department of Corrections - - - - - Respondent.

INITIAL BRIEF OF APPELLANT

Submitted: 6-19-, 2024

/s/ Patrick Bryant

Patrick Bryant
SCDC #215212

TYRCI-Unit 6-17A

200 Prison Rd.

Enoree, SC 29335

Appellant, Pro-se

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1. APPELLANT'S SUBSTANTIAL RIGHTS WERE PREJUDICED WHEN THE ADMINISTRATIVE LAW JUDGE ABUSED IT'S DISCRETION IN VIOLATION OF SOUTH CAROLINA CODE OF LAWS §1-23-610(B), WHEN THE COURT ISSUED IT'S ORDER OF DISMISSAL SEVENTEEN (17) DAYS BEFORE APPELLANT'S AMENDED INITIAL BRIEF WAS DUE, BY ORDER OF THE COURT, DENYING APPELLANT THE OPPORTUNITY TO EXHAUST HIS ADMINISTRATIVE REMEDIES.

TABLE OF AUTHORITIES

CASES

Kiawah Dev. Partners, II v. Dep't of Health & Env't Control, 411 S.C. 16, 766 S.E. 2d 707 (2014) - - - - - 5

South Carolina Dep't. of Corrs. v. Mitchell, 377 S.C. 256, 659 S.E. 2d 233 (Ct. App. 2008) - - - - - 5

State v. Allen, 370 S.C. 88, 634 S.E. 2d 653 (2006) - - - - - 7

Torrence II v. South Carolina Dept of Corrs., 433 S.C. 633, 861 S.E. 2d 36 (2021) - - - - - 12

STATUTES

S.C. Code Ann. § 1-23-610(B) (Supp. 2020) - - iii, 4, 5, 6, 7

S.C. Code Ann. § 24-3-430(D) (Supp. 2020) - - - - - 2

OTHER AUTHORITIES

("SCDC") Policy ADM. 15.13, Section (12.1) - - - - - 3,

("SCDC") Policy GA. 01-12, Section (13.2) - - - - - 2,

ISSUE ON APPEAL

I. DID THE ADMINISTRATIVE LAW JUDGE ABUSED IT'S DISCRETION IN VIOLATION OF SOUTH CAROLINA CODE OF LAWS § 1-23-610 (B),(e),(f), WHEN THE (ALJ) ISSUED IT'S ORDER OF DISMISSAL AGAINST APPELLANT SEVENTEEN (17) DAYS BEFORE APPELLANT'S AMENDED INITIAL BRIEF WAS DUE, BY ORDER OF THE COURT?

STATEMENT OF THE CASE

This matter is respectfully before this Honorable Court pursuant to the Appeal of Patrick Bryant, pro-se (hereafter, "Appellant"), an Inmate incarcerated in the South Carolina Department of Corrections (hereafter, "SCDC"), and is being housed at Tyger River Correctional Institution in Enoree, South Carolina. In the present appeal, Appellant asserts that the Administrative Law Judge (hereafter, "ALJ"), Abused it's Discretion by Prematurely Issuing its April 11, 2024 Order of Dismissal Seventeen (17) days before Appellant had the Opportunity to file his Amended Initial Brief on or before the due date provided by the Order of the Court. For the reasons discussed herein, this Court should reverse the (ALJ's) decision to dismiss.

FACTS / PROCEDURAL HISTORY

Appellant began working in the Tyger River Prison Industry Private Sector (PIECP) program since September 20, 2021, to the present date. Having been encourage to read Torrence II v. SCDC, 433 S.C. 633, 861 S.E.2d 36 (2021) case, began to believe that all inmates participating in the program were entitled to be paid an hourly

prevailing wage and at a rate of pay and condition of employment not less than non-inmate workers performing the same or similar work pursuant to S.C. Code Ann. § 24-3-430 (d), which states: ("No inmate participating in the program may earn less than the prevailing wage for work of similar nature in the private sector.")

Instead, of paying appellant the required prevailing wage the Department payed appellant an hourly wage of (\$ 7.25) per hour for worked performed. On June 27, 2023, appellant filed the prerequisite Inmate-To-Staff request as an Informal resolution pursuant to South Carolina Department of Corrections ("SCDC") (Policy GA-01.12, (13.2)^[1] to Mary Nations, SCDC's Inmate pay designee prison Industry plant Supervisor at Tiger River, C. I., requesting his pay to be adjusted to reflect the prevailing wage ruling mandated announced in Torrence II v. S.C. Dep't. of Corrections, 433 S.C. 633, 861 S.E.2d 36 (2021). On July 3, 2023, Mary Nations answered the inmate-to-staff request. (See. App. R. p. ct 1 of 29).

Footnote

1. SCDC Policy GA-01.12, (13.2) provides: (Inmate must make an effort to Informally resolve a grievance by submitting a Request to Staff).

On July 3, 2023, Appellant filed his step one grievance, which was automatically forwarded to a Step two grievance on July 11, 2023 by the Warden. The responsible official denied the step two grievance on October 23, 2023, explaining that appellant's grievance was 'Untimely' under SCDC policy ADM. -15.13 (12.1), which governs problems with inmate pay. (See App. R. p. (s) at 2 thru 4 of 29 (In Tandem)).

On November 14, 2023, appellant filed his "Notice of Appeal on all parties involved." (See App. R. p. at 5 of 29), the case was assigned to the Administrative Law Judge Robert L. Reibold on December 1, 2023 (See App. R. p. at 7 of 29). Appellant filed his Initial brief on January 3, 2024. (See App. R. p. at 8 thru 11 of 29), prior to the date on which the Record on Appeal by the Respondent ("SCDC") was due. The Department ("SCDC"), sought on February 9, 2024 an extension of time in which to file the Record on Appeal. (See App. R. p. at 12 thru 14 of 29). While the extension was denied, the filing of the motion itself resulted in a change to the timeline for service of the Record on Appeal. (See App. R. p. at 15 thru 17 of 29).

On March 27, 2024, the Respondent served its Record on Appeal with the Court and on Appellant. (See App. R. p. at 18 of 29). On April 11, 2024, the Administrative

Law Judge Issued it's Conclusion, dismissing Appellant's appeal for lack of appellate jurisdiction due to appellant's failure to designate an issue for appeal, thereby divesting the court jurisdiction to entertain appellant's appeal. (See App. R. p. at 19 thru 29).

Appellant then after filed a Timely Notice of Appeal, and the Appeal was assigned an Appellate Case Number on May 22, 2024 and received by Appellant via Institutional Legal Mail May 29, 2024. (See APPENDIX (A)).

This Appeal follows:

ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW JUDGE ABUSED ITS DISCRETION IN VIOLATION OF SOUTH CAROLINA CODE OF LAW §1-23-610 (B), (C), (F), WHEN THE (ALJ) ISSUED ITS ORDER OF DISMISSAL AGAINST APPELLANT SEVENTEEN (17) DAYS BEFORE APPELLANT'S AMENDED INITIAL BRIEF WAS DUE, BY ORDER OF THE COURT ?

JURISDICTION

The opinion of the Administrative Law Court was filed on April 11, 2024. A notice of appeal to the South Carolina Court of Appeals was timely filed and was assigned a case number on May 22, 2024.

This Court has jurisdiction under S.C. Code Ann. § 1-23-610 (Supp. 2020).

STANDARD OF REVIEW

"In an appeal from an ALC decision, the Administrative Procedures Act (APA) provides the appropriate standard of review". Kiawah Dev. Partners, II vs. S.C. Dep't of Health & Env't Control, 411 S.C. 16, 28, 766 S.E. 2d 707, 715 (2014). "Section 1-23-610 of the South Carolina Code (Supp. 2022) sets forth the standard of review when the Court of Appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency". S.C. Dep't of Corr. vs. Mitchell, 377 S.C. 256, 258, 659 S.E. 2d 233, 234 (ct. App. 2008). "The review of the [ALC's] order

must be confined to the record". S.C. Code Ann. §1-23-610(B) (supp. 2022). "Th[is] Court may not Substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on question of fact". Id. "The Court of Appeals may... reverse or modify the decision if the Substantive rights of the petitioner have been prejudiced because the Findings, Conclusion, are in violation of Constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; Clearly erroneous in view of the reliable, probative, and Substantist evidence on the whole record; or arbitrary or Capricious or Characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

LAW/ANALYSIS

1. TIMELINE TO FILE AMENDED BRIEF

Appellant argues that his Substantist rights were prejudiced when the Administrative Law Judge (ALJ) [A]bused its discretion in violation of South Carolina Code

of Law § 1-23-610(B), When the court issued its Order of Dismissal against appellant Seventeen (17) days before appellant's amended initial brief was due by the Court order dated February 12, 2024, thereby denying appellant the opportunity to exhaust his administrative remedies.

Section § 1-23-610(B), provisions (E) and (F) provides that a petitioners substantial rights have been prejudiced when the (ALJ's) decision was "Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or when the (ALJ's) decision is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Id. "Abuse of discretion is presented where an ("ALJ's") action is erroneous and without any rational basis, or is clearly not justified under the particular circumstances of the case." Abuse of discretion may also occur when an ("ALJ") does not follow procedure required by law or agency policy. Id. (Example: Not permitting a claimant to submit evidence necessary to support his claim. State vs. Allen, 370 S.C. 88, 94, 634 S.E. 2d 653, 656 (2006) ("abuse of discretion occurs" when the trial court is vest with discretion, but the ruling

reveals no discretion was exercised or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious").

A. RECORD EVIDENCE

Looking at the record as a whole, the 'Overwhelming' evidence is as follows:

(1) On February 9, 2024, the Department ("SCDC") filed a Motion To Extend Time to file the record on appeal. (See App. R. p. at 12 thru 14 of 29).

(2) On February 12, 2024, the (ALJ) Issued its Order denying the Dept. ("SCDC") extension of time, which resulted in a [C]hange to the Timeline for service of the record on appeal and for appellant to submit his 'Amended Initial Brief. By Order of the Court the Record on Appeal shall be filed within forty-five (45) days from the date of the Order. (See App. R. p. at 16 of 29, Ln(s) 8-9). The Court further stated:

IT IS FURTHER ORDERED that Appellant shall file his brief within thirty (30) days from the date the Record on Appeal is filed^[2]. (See App. R. p. at 16 of 29, Ln(s) 10-11).

Therefore, according to the Administrative Law Judge Order dated February 12, 2024, the Respondent's ("SCDC") Record on Appeal was due on March 28, 2024, and thirty (30) days after the Record is filed, Appellant's Amended Initial Brief was due, in which would be due on or about April 28, 2024.

The (ALJ) abused its discretion in dismissing appellants Appeal on April 11, 2024, Seventeen (17) days before appellant had the opportunity to file his Amended Initial Brief on or about April 28, 2024, thus action by the ALJ was an Unwarranted exercise of discretion, arbitrary and capricious that prejudice the appellant by denying him the opportunity to exhaust his administrative

Footnote

2. The ALJ stated in its (Footnote #2) that: "If Appellant has filed a brief prior to the date of this Order, Appellant may file an amended initial brief on or before the due date provided by the Order, (See App. R. p. at 16 of 29).

remedies within the timeline ordered by the court.

CONCLUSIONS

Based on the foregoing, Appellant respectfully request this Court to REVERS the Administrative Law Judge Order dated April 11, 2024 and REMAND appellant's Case back to the Administrative Law Court with instructions for a Briefing Schedule.

Respectfully Submitted,

/s/ Patrick Bryant

Patrick Bryant

Appellant, pro-se

Submitted 2-19-2024

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellant CASE No. 2024--000823

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SC Court of Appeals

Patrick Bryant, # 215212 ----- Appellant,

vs,

South Carolina Department of Corrections, ----- Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certified he has served a true and correct copy of the enclosed Appellant's Initial Brief and Designation of matter to be included in the record on appeal on the persons whose name and addresses appear below, by placing the aforesaid in properly addressed, first-class postage affixed envelopes and placed in the U.S. Mail this wednesday of 19, 2024.

Those served:

Administrative Law Court, Clerk
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC, 29201

SCDC General Counsel

P.O. Box 21787
Columbia, SC 29221-1787

SC, Court of Appeals
Jenny A. Kitchings, Clerk
P.O. Box 11629
Columbia, SC 29211

Respectfully Submitted,

1st Patrick Bryant
Patrick Bryant
Appellant, Pro-se

Sworn to and Subscribed Before Me
This wed Day of June, 2024

Paul Hermin
Notary Public

My Comm. Expires Dec. 10, 2024

Patrick Bryant
SCDC # 215212
TYRCI-Unit 6-17A
100 Prison Rd.
Enoree, SC 29335

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SC Court of Appeals

RE Bryant v. SCDC, Appellate Case No. 2024-000823

Dear Clerk,

Enclosed for filing please find my Initial Brief and My Designation of Matter to be Included in the Record on Appeal and a copy of my proof of service. I thank you for your time in this matter.

kindest Regards,
Patrick Bryant
Patrick Bryant
Appellant, pro-se

Patrick Bryant
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